

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILLS NOS. 738 & 790

92ND GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, March 4, 2004, with recommendation that the Senate Committee Substitute do pass.

3138S.04C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 188.080 and 197.200, RSMo, and to enact in lieu thereof three new sections relating to abortion services, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 188.080 and 197.200, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 188.080, 188.250, and 197.200, to read as follows:

188.080. Notwithstanding any other penalty provision in this chapter, any person who is not a licensed physician as defined in section 188.015 who performs or attempts to perform an abortion on another as defined in subdivision (1) of section 188.015, is guilty of a class B felony, and, upon conviction, shall be punished as provided by law. Any physician performing an abortion who does not have **[surgical] clinical privileges to provide obstetrical or gynecological care** at a hospital **located within thirty miles of the location at which the abortion is performed** which offers obstetrical or gynecological care shall be guilty of a class B felony, and, upon conviction shall be punished as provided by law.

188.250. 1. No person shall intentionally cause, aid, or assist a minor to obtain an abortion without the consent or consents required by section 188.028, RSMo.

2. A person whose conduct has sufficient contact with this state to render such person subject to the jurisdiction of this state and who violates subsection 1 of this section shall be civilly liable to the minor and to the person or persons required to give the consent or consents pursuant to section 188.028. A court may award damages to any person adversely affected by a violation of this section, including compensation for emotional injury without the need for personal

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

presence at the scene of any act or event, and the court may further award attorneys' fees, litigation costs, and punitive damages.

3. It shall not be a defense to a claim brought pursuant to this section that the abortion was performed or induced pursuant to consent to the abortion given in a manner that is otherwise lawful in the state or place where the abortion was performed or induced.

4. An unemancipated minor does not have capacity to consent to any action in violation of this section or section 188.028.

5. A court may enjoin conduct that would be in violation of this section upon petition by the attorney general, a prosecuting or circuit attorney, or any person adversely affected or who reasonably may be adversely affected by such conduct, upon a showing that such conduct:

(1) Is reasonably anticipated to occur in the future; or

(2) Has occurred in the past, whether with the same minor or others, and that it is not unreasonable to expect that under similar circumstances such conduct will be repeated.

197.200. As used in sections 197.200 to 197.240, unless the context clearly indicates otherwise, the following terms mean:

(1) "Ambulatory surgical center", any public or private establishment operated primarily for the purpose of performing surgical procedures or primarily for the purpose of performing childbirths **or any establishment operated for the purpose of performing or inducing any second or third-trimester abortions or five or more first-trimester abortions per month**, and which does not provide services or other accommodations for patients to stay more than twenty-three hours within the establishment, provided, however, that nothing in this definition shall be construed to include the offices of dentists currently licensed pursuant to chapter 332, RSMo;

(2) "Dentist", any person currently licensed to practice dentistry pursuant to chapter 332, RSMo;

(3) "Department", the department of health and senior services;

(4) "Governmental unit", any city, county or other political subdivision of this state, or any department, division, board or other agency of any political subdivision of this state;

(5) "Person", any individual, firm, partnership, corporation, company, or association and the legal successors thereof;

(6) "Physician", any person currently licensed to practice medicine pursuant to chapter 334, RSMo;

(7) "Podiatrist", any person currently licensed to practice podiatry pursuant to chapter 330, RSMo.

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